

UNITED STATES OF AMERICA,)
Plaintiff,)
))
v.)
))
HARVEY LEE MOXLEY,)
Defendant.)
)

THIS MATTER is before the court on remand from the Fourth Circuit Court of Appeals. In the unpublished opinion of United States v. Moxley, No. 09-6402 (4th Cir. 2009), the Fourth Circuit asked this court to determine whether Moxley’s notice of appeal was timely filed. If this court determines that the notice of appeal was untimely, the court must then decide whether Moxley is eligible for an extension of time pursuant to FED. R. APP. P. 4(b)(4).

The order Moxley seeks to appeal was filed February 6, 2009. Thus, the ten day appeal

period expired on February 23, 2009. See FED. R. APP. P. 26(a)(2). Moxley's notice of appeal included a certificate of service stating that he placed the notice of appeal in the prison legal mail system on February 20, 2009, which would fall within the ten day appeal period. However, Moxley mailed his notice of appeal with a cover letter dated February 25, 2009, thereby calling the date listed in his certificate of service into doubt.

This court need not determine which of these two dates is correct. In Moxley's cover letter, he states that he did not receive the order he wishes to appeal until February 18, 2009. Because Moxley then acted promptly to file his notice of appeal regardless of which of these dates is accurate, the court finds that good cause exists for granting an extension of time pursuant to FED. R. APP. P. 4(b)(4).

IT IS, THEREFORE, ORDERED that Defendant's Notice of Appeal is deemed timely filed.

IT IS FURTHER ORDERED that the Deputy Clerk shall forward a copy of this Order to the Fourth Circuit Court of Appeals along with the record on appeal.

Signed: September 24, 2009



Richard L. Voorhees
United States District Judge

